

Senate Daily Reader

Friday, February 10, 2006

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State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

820M0166

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB 1071** -

01/26/2006

Introduced by: Representatives Tidemann, Brunner, Davis, Dennert, Frysliie, Gassman, Hackl, Halverson, Hargens, Haverly, Heineman, Howie, Hunhoff, Jensen, Klaudt, Lange, Nelson, O'Brien, Peters, Rausch, Rave, Rounds, Sigdestad, and Street and Senators Hanson (Gary), Bartling, Duenwald, Earley, Gray, Kloucek, Koskan, Lintz, McNenny, Moore, Peterson (Jim), Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to amend the composition, supervision, and functioning of
2 the State Seed Certification Board.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 38-11-2 be amended to read as follows:

5 38-11-2. All members of the State Seed Certification Board shall be electors of the state; ~~one~~
6 two shall be ~~a person~~ persons recommended for appointment by the South Dakota Crop
7 Improvement Association; ~~one shall be a person recommended for appointment by the South~~
8 ~~Dakota Horticultural Society~~; one shall be a representative of the State Department of
9 Agriculture; ~~one~~ two ~~member~~ shall be ~~a person~~ persons recommended by the dean of agriculture
10 at South Dakota State University; ~~one shall be a person recommended for appointment by the~~
11 ~~South Dakota Potato Growers' Association; the~~. The members of the board shall be appointed
12 so as to represent all areas of the state. The secretary of agriculture shall make these



1 appointments from ~~a list~~ lists of two or more names submitted for each position on the board.

2 Section 2. That § 38-11-1.1 be amended to read as follows:

3 38-11-1.1. The Seed Certification Board shall be administered under the direction and
4 supervision of the ~~Department of Agriculture and the secretary thereof~~ College of Agriculture
5 and Biological Sciences at South Dakota State University and the dean of the college, but shall
6 retain the quasi-judicial, quasi-legislative, advisory, other nonadministrative and special
7 budgetary functions ~~(as defined in § 1-32-1)~~, otherwise vested in it and shall exercise those
8 functions independently of the ~~secretary of agriculture~~ dean and the college.

9 Section 3. That § 38-11-4 be amended to read as follows:

10 38-11-4. The State Seed Certification Board shall hold its meetings ~~at the seat of~~
11 ~~government~~ at such times and places as it designates, ~~but there shall not be~~. The board shall hold
12 at least one, but not more than four regular meetings each year, including the annual meeting
13 ~~which shall be held on the last Tuesday of January of each year, at which~~. At the annual meeting
14 the president, vice-president, and secretary shall be elected for the ensuing year; ~~provided that~~
15 ~~the~~. The president of the board ~~shall have power to~~ may call special meetings whenever ~~in his~~
16 ~~judgment he finds~~ the president judges it necessary.

17 Section 4. That § 38-11-6 be amended to read as follows:

18 38-11-6. ~~The State Seed Certification Board is~~ secretary of agriculture and the dean of the
19 College of Agriculture and Biological Sciences at South Dakota State University shall designate
20 the official seed certifying agency for the state. ~~The board~~ State Seed Certification Board may
21 designate one or more public or private entities to perform necessary seed certification activities
22 under the supervision of the board. The board may designate separate official certification
23 agencies for various types or classifications of seed or propagating materials. The board shall
24 notify the secretary and the dean of any designations made pursuant to this section.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

970M0301

SENATE JUDICIARY COMMITTEE ENGROSSED NO.

HB 1134 - 02/06/2006

Introduced by: Representatives Hanks, Brunner, Buckingham, Davis, Frost, Fryslie, Garnos, Hackl, Klaudt, Krebs, McCoy, Rave, and Rhoden and Senators Lintz, Bogue, and Duenwald

1 FOR AN ACT ENTITLED, An Act to to revise certain provisions regarding the justifiable use
2 of force.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-5-9 be amended to read as follows:

5 22-5-9. Any person may lawfully resist, by force or violence, the commission of any public
6 offense as follows:

7 (1) Any person, ~~about to be injured~~ upon reasonable apprehension of threat of bodily
8 injury, may make sufficient resistance to prevent an offense against his or her person
9 or the person of any family or household member ~~thereof~~, or to prevent an illegal
10 attempt by force to take or injure property in his or her lawful possession; and
11 (2) Any person may make sufficient resistance in aid or defense of a any other person,
12 ~~about to be injured~~ threatened with bodily injury, to prevent such offense.

13 Section 2. That § 22-18-4 be amended to read as follows:

14 22-18-4. ~~To use or attempt to use or offer to use force or violence upon or toward the person~~



1 ~~of another is not unlawful if committed either by any person about to be injured, or by any other~~
2 ~~person in the aid or defense of a person about to be injured, in preventing or attempting to~~
3 ~~prevent an offense against his or her own person, or in preventing any trespass or other unlawful~~
4 ~~interference with real or personal property in his or her lawful possession. However, the force~~
5 ~~or violence used cannot be more than that sufficient to prevent such offense. Any person is~~
6 ~~justified in the use of force or violence against another person when, and to the extent that, the~~
7 ~~person reasonably believes that such conduct is necessary to prevent or terminate the other~~
8 ~~person's trespass on or other criminal interference with real property or personal property~~
9 ~~lawfully in his or her possession or in the possession of another who is a member of his or her~~
10 ~~immediate family or household or of a person whose property he or she has a legal duty to~~
11 ~~protect. However, the person is justified in the use of deadly force only as provided in §§ 22-16-~~
12 ~~34 and 22-16-35. A person does not have a duty to retreat if the person is in a place where he~~
13 ~~or she has a right to be.~~

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

462M0626

HOUSE ENGROSSED NO. **HB 1178** - 02/01/2006

Introduced by: Representatives Elliott, Frost, and Novstrup and Senators Koetzle, Hundstad, Napoli, Sutton (Dan), and Sutton (Duane)

1 FOR AN ACT ENTITLED, An Act to provide for the establishment of certain honorary trusts
2 and of certain trusts for animals.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Subject to the provisions of section 3 of this Act, a trust may be performed by the trustee for
7 twenty-one years but no longer, whether or not the terms of the trust contemplate a longer
8 duration if the trust is for a specific lawful noncharitable purpose or for lawful noncharitable
9 purposes to be selected by the trustee.

10 Section 2. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as
11 follows:

12 Subject to the provisions of section 3 of this Act, a trust for the care of a designated animal
13 is valid. The trust terminates when no living animal is covered by the trust. A governing
14 instrument shall be liberally construed to bring the transfer within this section, to presume
15 against the merely precatory or honorary nature of the disposition, and to carry out the general



1 intent of the transferor. Extrinsic evidence is admissible in determining the transferor's intent.

2 Section 3. That chapter 29A-2 be amended by adding thereto a NEW SECTION to read as
3 follows:

4 Any trust provided for by sections 1 and 2 of this Act is subject to the following provisions:

5 (1) Except as expressly provided otherwise in the trust instrument, no portion of the
6 principal or income may be converted to the use of the trustee or to any use other
7 than for the trust's purposes or for the benefit of a covered animal;

8 (2) Upon termination, the trustee shall transfer the unexpended trust property in the
9 following order:

10 (a) As directed in the trust instrument;

11 (b) If the trust was created in a nonresiduary clause in the transferor's will or in a
12 codicil to the transferor's will, then under the residuary clause in the
13 transferor's will; and

14 (c) If no beneficiary results from the application of subsection (a) or (b) of this
15 subdivision, then to the transferor's heirs under § 29A-2-711;

16 (3) For the purposes of § 29A-2-707, the residuary clause is treated as creating a future
17 interest under the terms of a trust;

18 (4) The intended use of the principal or income may be enforced by a person designated
19 for that purpose in the trust instrument or, if none, by an individual appointed by a
20 court upon application to it by that person;

21 (5) Except as ordered by the court or required by the trust instrument, no filing, report,
22 registration, periodic accounting, separate maintenance of funds, appointment, or fee
23 is required by reason of the existence of the fiduciary relationship of the trustee;

24 (6) A court may reasonably reduce the amount of the property transferred if it determines

1 that that amount substantially exceeds the amount required for the intended use. The
2 amount of the reduction, if any, passes as unexpended trust property under
3 subdivision (2) of this section;

4 (7) If no trustee is designated or no designated trustee is willing or able to serve, a court
5 shall name a trustee. A court may order the transfer of the property to another trustee
6 if required to ensure that the intended use is carried out and if no successor trustee
7 is designated in the trust instrument or if no designated successor trustee agrees to
8 serve or is able to serve. A court may also make such other orders and determinations
9 as are advisable to carry out the intent of the transferor and the purpose of this Act.

10 Section 4. Nothing in this Act may be construed to reinstate the rule against perpetuities in
11 South Dakota as to any trust except trusts specifically defined in this Act as honorary trusts or
12 trusts for the care of specific animals.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

609M0247

SENATE TAXATION COMMITTEE ENGROSSED NO.

HB 1206 - 02/08/2006

Introduced by: Representatives Garnos, Bradford, Hennies, Hills, and Turbiville and
Senators Adelstein, Dempster, and Lintz

1 FOR AN ACT ENTITLED, An Act to provide contractors' excise, sales, and use tax refunds for
2 the filming of certain motion pictures, documentaries, television advertisements, or
3 television films.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. Terms used in this Act mean:

6 (1) "Department," the Department of Revenue and Regulation;

7 (2) "Film," any portion of a commercial production of a motion picture, documentary,
8 television advertisement, or television film;

9 (3) "Filming date," the first date a person commits to the Department of Tourism and
10 State Development that South Dakota will be the primary location for shooting
11 footage for a film;

12 (4) "Person," any individual, firm, copartnership, joint venture, association, limited
13 liability company, limited liability partnership, corporation, estate, trust, business
14 trust, receiver, unit of government, political subdivision of any state, or any group or
15 combination acting as a unit;



(5) "Project," the building of sets, purchase of materials, and other costs associated with the filming or production of a motion picture, documentary, television advertisement, or television film;

(6) "Project cost," the amount paid in money, credits, property, or other money's worth for a project;

(7) "Secretary," the secretary of the Department of Revenue and Regulation.

Section 2. As provided in this Act, any person holding a permit issued pursuant to this Act may apply for and obtain a refund or credit for sales or use tax imposed and paid by such person under the provisions of chapter 10-45 or 10-46 and contractors' excise taxes imposed and paid under the provisions of chapter 10-46A or 10-46B on the project costs.

Section 3. The refund of taxes for a motion picture, documentary, television advertisement, or television film pertains only to project costs incurred and paid after July 1, 2006, and within thirty-six months of the approval of the application required by this Act. No refund may be made unless:

(1) The project cost that are occurred in South Dakota exceeds the sum of two hundred fifty thousand dollars in taxable costs; and

(2) The person applying for the refund obtains a permit from the secretary as set forth in this Act.

Section 4. If the project cost for a new motion picture, documentary, television advertisement, or television film exceeds two hundred fifty thousand dollars in taxable costs, the refund shall be one hundred percent of the taxes attributed to the taxable project costs in excess of two hundred fifty thousand dollars.

Section 5. Any person desiring to claim a refund pursuant to this Act shall apply for a permit from the secretary at least thirty days prior to the shooting of the motion picture, documentary,

1 television advertisement, or television film. The application for a permit shall be submitted on
2 a form prescribed by the secretary. A separate application shall be made and submitted for each
3 project. Upon approval of the application, the secretary shall issue a permit entitling the
4 applicant to submit refund claims as provided by this Act. Such permit or refund claims are not
5 assignable or transferable except as collateral or security pursuant to chapter 57A-9.

6 Section 6. Any claim for refund shall be submitted on forms prescribed by the secretary and
7 shall be supported by such documentation as the secretary may require. The secretary may deny
8 any claim where the claimant has failed to provide information or documentation requested or
9 considered necessary by the secretary to determine the validity of the claim.

10 Section 7. Any person issued a permit pursuant to this Act shall submit a return to the
11 department no more frequently than on or before the last day of each month and no less
12 frequently than on or before the last day of each month following each calendar quarter. The
13 secretary shall determine and pay the amount of the tax refund within thirty days of receipt of
14 the return. Ninety-five percent of the amount of refund shall be paid to the claimant in
15 accordance with §§ 10-59-22 and 10-59-23, and five percent shall be withheld by the
16 department. No interest may be paid on the refund amount. If electronic funds transfer is
17 available to the secretary, the secretary shall pay the refund by electronic funds transfer if
18 requested by the claimant.

19 Section 8. The amounts withheld by the department in accordance with this Act shall be
20 retained until the project has been completed and the claimant has met all the conditions of this
21 Act, at which time all sums retained shall be paid to the claimant.

22 Section 9. If any claim has been fraudulently presented or supported as to any item in the
23 claim, or if the claimant fails to meet all the conditions of this Act, then the claim may be
24 rejected in its entirety and all sums previously refunded to the claimant shall constitute a debt

1 to the state and a lien in favor of the state upon all property and rights to property whether real
2 or personal belonging to the claimant and may be recovered in an action of debt.

3 Section 10. Any person, aggrieved by the denial in whole or in part of a refund claimed
4 under this Act, may, within thirty days after service of the notice of such denial by the secretary,
5 demand a hearing, upon notice, before the secretary. The hearing shall be conducted pursuant
6 to chapter 1-26.

7 Section 11. Any person, aggrieved by a decision of the secretary under this Act, may, within
8 thirty days of receipt of written notice of the secretary's decision, make written application to
9 the secretary for a hearing to be conducted pursuant to chapter 1-26. Hearings are to be
10 conducted and appeals taken pursuant to the provisions of chapters 1-26 and 1-26D. A copy of
11 the hearing examiner's proposed decision, findings of fact, and conclusions of law shall be
12 served on all parties when furnished to the secretary. If the secretary, pursuant to chapter 1-26D,
13 accepts the final decision of the hearing examiner, no appeal from a final decision of the
14 secretary upon any additional tax to be paid may be taken unless any amount ordered paid by
15 the secretary is paid or a bond filed to insure payment of the amount. However, if the final
16 decision of the secretary, pursuant to chapter 1-26D, rejects or modifies the decision of the
17 hearing examiner regarding the amount due, an appeal may be taken without payment of the
18 amount ordered to be paid and without filing of a bond. If the secretary's decision is affirmed
19 by the circuit court, no appeal may be taken unless any amount ordered to be paid by the
20 secretary is paid or a bond is filed to insure payment of such amount.

21 Section 12. Any amount refunded pursuant to this Act for a project that is not completed
22 within the time frames prescribed by this Act, including any extensions granted by the secretary,
23 shall be returned to the state without interest. Any refunded amounts not returned pursuant to
24 this section and all sums previously refunded to the claimant constitute a debt to the state and

1 a lien in favor of the state upon all property and rights to property whether real or personal
2 belonging to the claimant and may be recovered in an action of debt.

3 Section 13. The secretary shall promulgate rules, pursuant to chapter 1-26, concerning the
4 procedures for filing refund claims and the requirements necessary to qualify for a refund.

5 Section 14. This Act is repealed on June 30, 2011.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

488M0421

SENATE EDUCATION COMMITTEE ENGROSSED NO.

SB 81 - 02/09/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Schoenbeck, Abdallah, Duniphan, Kelly, Kloucek, Koetzle, McCracken, Moore, and Olson (Ed) and Representatives Cutler, Haley, Jensen, McCoy, Murschel, Nelson, and Roberts

1 FOR AN ACT ENTITLED, An Act to prohibit the acquiring or selling of certain
2 communications records and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Communications provider," a provider that offers telecommunications services for
6 a fee to the public, regardless of the facilities used, or a provider of IP-enabled voice
7 service;

8 (2) "Confidential communications records information," information that relates to the
9 quantity, technical configuration, type, destination, incoming calls, outgoing calls,
10 text messaging, location, or amount of use of a service offered by a communications
11 provider subscribed to by any customer of that communications provider which is
12 made available to a communications provider solely by virtue of the relationship
13 between the communications provider and the customer, or information contained
14 in any bill related to the product or service offered by a communications provider and



received by any customer of the communications provider;

- (3) "IP-enabled voice service," the provision of real-time two-way voice communications offered to the public, transmitted through customer premises equipment using transmission control protocol/internet protocol (TCP/IP), or a successor protocol, for a fee, whether part of a bundle of services or separately, with two-way interconnection capability such that the service can originate traffic to, and terminate traffic from, a public switched telephone network.

Section 2. No person may obtain, or attempt to obtain, confidential communications records information from a communications provider, without authorization from the customer to whom such confidential communications records information relates, by knowingly and intentionally:

- (1) Making false or fraudulent statements or representations to an employee of a communications provider;
- (2) Making false or fraudulent statements or representations to a customer of a communications provider;
- (3) Providing false documentation to a covered entity knowing that the documentation is false; or
- (4) Accessing customer accounts of a communications provider via the internet.

A violation of this section is a Class 1 misdemeanor.

Section 3. No person may knowingly and intentionally sell, or attempt to sell, confidential communications records information from a communications provider without authorization from the customer to whom such confidential communications records information relates. A violation of this section is a Class 6 felony.

Section 4. This Act may not be construed to prevent any action by a law enforcement agency, or any officer, employee, or agent of a law enforcement agency, to obtain confidential

1 communications records information from a communications provider pursuant to a subpoena
2 or court order.

3 Section 5. This Act does not prohibit a communications provider from obtaining, using,
4 disclosing, or permitting access to any confidential communications records information, either
5 directly or indirectly through its agents as otherwise authorized by law.

6 Section 6. This Act does not prohibit a communications provider from obtaining, using,
7 disclosing, or permitting access to any confidential communications records information in
8 connection with the sale or transfer of all or part of its business, the purchase or acquisition of
9 all or part of a business, or the migration of a customer from one communications provider to
10 another.

11 Section 7. Any consumer who claims to have been adversely affected by any act or practice
12 declared to be unlawful by section 2 or section 3 of this Act may bring a civil action for the
13 recovery of twice the actual damages suffered or five hundred dollars, whichever is greater, as
14 a result of the willful act or practice. In addition, the consumer may collect court costs and
15 reasonable attorney fees expended by the consumer to bring an action under this section.

16 Section 8. Whereas, this Act is necessary for the support of the state government and its
17 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
18 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

295M0437

SENATE COMMERCE COMMITTEE ENGROSSED NO.

SB 98 - 02/09/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Moore, McCracken, and Schoenbeck and Representatives Rave, Cutler, Gillespie, Hargens, Hennies, O'Brien, and Rounds

1 FOR AN ACT ENTITLED, An Act to limit the transfer or renewal of certain alcohol beverage
2 licenses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 35-2-7 be amended to read as follows:

5 35-2-7. Any license granted under this title may be transferred to a new location or to
6 another person. If the transfer is to another person, the licensee ~~must~~ shall show in writing,
7 under oath, that ~~he~~ the licensee has made a bulk sale of the business operated under the license.
8 The bulk sale may be conditioned upon the granting of a transfer of the license. The transferee
9 ~~must~~ shall make an application exactly as if an original applicant, and the application shall take
10 the same course and be acted upon as if an original application. No transfer of any license to
11 another person may be granted until all ~~municipal and state sales~~ taxes incurred by the transferor
12 as a result of the operation of the licensed premises ~~have been paid and that all property taxes~~
13 ~~levied on such premises which are the liability of the licensee, including municipal and state~~
14 sales and use taxes, unemployment insurance tax, or any other state tax, are paid or are not



1 delinquent. No transfer of any license to another person may be granted until all property taxes
2 which are the liability of the licensee levied on the licensed premises are paid or are not
3 delinquent. No transfer of any license may be granted from an Indian tribe operating in Indian
4 country controlled by the Indian tribe or from an enrolled tribal member operating in Indian
5 country controlled by the enrolled tribal member's tribe until all use tax incurred as a result of
6 the operation of the licensed premises by nonmembers, and any other state tax, has been
7 remitted or is not delinquent. If the transfer is to a new location, the licensee ~~must~~ shall make
8 application showing all the relevant facts ~~as to such~~ for the new location, ~~which.~~ The application
9 shall take the same course and be acted upon as if an original application. ~~When~~ If a license is
10 transferred, a fee of one hundred fifty dollars is required to continue the unexpired portion of
11 the license.

12 Section 2. That § 35-2-24 be amended to read as follows:

13 35-2-24. No license granted under this title may be reissued until all ~~municipal and state~~
14 ~~sales and use tax~~ taxes incurred by the licensee as a result of the operation of the licensed
15 premises ~~have been paid and that all property taxes which are the liability of the licensee levied~~
16 ~~on such,~~ including municipal and state sales and use taxes, unemployment insurance tax, or any
17 other state tax, are paid or are not delinquent. No license granted under this title may be reissued
18 until all property taxes which are the liability of the licensee levied on the licensed premises are
19 paid or are not delinquent. No license granted under this title may be reissued to an Indian tribe
20 operating in Indian country controlled by the Indian tribe or to an enrolled tribal member
21 operating in Indian country controlled by the enrolled tribal member's tribe until the Indian tribe
22 or enrolled tribal member remits to the department all use tax incurred by nonmembers as a
23 result of the operation of the licensed premises, and any other state tax has been remitted or is
24 not delinquent.

1 Section 3. That § 35-2-25 be amended to read as follows:

2 35-2-25. No license granted pursuant to subdivisions 35-4-2(3), (4), (6), (12), (13), (16), and
3 (17) may be issued unless the applicant has first obtained a sales tax license pursuant to chapter
4 10-45, or, if applicable, a use tax license pursuant to chapter 10-46. The provisions of this
5 section do not apply to a municipality which has procured a retail alcoholic beverage license
6 pursuant to chapter 35-3.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

668M0534

SENATE EDUCATION COMMITTEE ENGROSSED NO.

SB 103 - 02/09/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Kloucek and Kooistra and Representatives Kroger, Dennert, Elliott, Gassman, Haley, Lange, Miles, Schafer, and Thompson

1 FOR AN ACT ENTITLED, An Act to exempt from motor vehicle license fees certain motor
2 vehicles used to transport children to and from certain head start programs.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 32-5-42 be amended to read as follows:

5 32-5-42. Any motor vehicle that is the property of this state, the United States, a county, a
6 township, a municipality, a public or nonpublic school accredited by the Department of
7 Education, an Indian mission school in this state, an Indian tribe, a fire department, a federally
8 funded Head Start Program bus, or any bus or van owned by a church, or any vehicle purchased
9 by the state under sections 18 and 16(b)2 of the Urban Mass Transportation Act of 1964 to
10 provide public transportation or specialized transportation or both in rural and urbanized areas
11 may be registered upon application, in the manner provided for other motor vehicles. However,
12 the custodian of the vehicle shall make the application directly to the department. No fees may
13 be charged for the registration of the vehicle. The department, upon payment to it of the actual
14 cost of the plates, shall furnish number plates for the vehicle. All costs collected under the



1 provisions of this section shall be deposited in the license plate special revenue fund. Any
2 disbursement from this fund shall be made by warrants drawn by the state auditor on vouchers
3 duly approved by the department. If the vehicle is used for a private business use or as a
4 commercial motor carrier as defined in § 32-9-1, the operator shall secure vehicle registration
5 pursuant to chapter 32-9 for such use.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

328M0119

SENATE HEALTH AND HUMAN SERVICES

COMMITTEE ENGROSSED NO. **SB 115** - 02/08/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Gant, Apa, Bogue, Broderick, Duniphan, and Earley and
Representatives Van Etten, Nelson, Rausch, and Vehle

- 1 FOR AN ACT ENTITLED, An Act to allow a mother to breast-feed her child anywhere she and
2 the child have a right to be.
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
4 Section 1. A mother may breast-feed her child in any location where the mother and child
5 have a right to be.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

456M0563

SENATE TAXATION COMMITTEE ENGROSSED NO.

SB 121 - 02/08/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Bogue, Koskan, Lintz, and Olson (Ed) and Representatives Dykstra, Deadrick, and Rhoden

1 FOR AN ACT ENTITLED, An Act to clarify provisions regarding the use of railroad rights-of-
2 way by utility companies.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Recognized electric utilities, public utilities, telecommunication companies, and
5 rural water systems duly organized under the laws of South Dakota have the right to traverse the
6 railroad right-of-way with underground facilities, subject to reasonable railroad regulation and
7 terms and conditions as to prevention of present and future railroad operational interference,
8 placement, safety, liability, maintenance, reclamation, administrative costs, and compensation.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

227M0553

SENATE EDUCATION COMMITTEE ENGROSSED NO.

SB 134 - 02/07/2006

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senator Bogue

1 FOR AN ACT ENTITLED, An Act to revise the distribution of state aid to education, to
2 provide funding for sparse school districts, and to make an appropriation therefor.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-13-10.1 be amended to read as follows:

5 13-13-10.1. Terms used in this chapter mean:

6 (1) "Average daily membership," the greater of (1) the average number of resident and
7 nonresident kindergarten through twelfth grade pupils enrolled in all schools operated
8 by the school district during the previous regular school year, minus average number
9 of pupils for whom the district receives tuition, except pupils described in
10 subdivision (1A) and pupils for whom tuition is being paid pursuant to § 13-28-42
11 and plus the average number of pupils for whom the district pays tuition or (2) the
12 average of the average number of resident and nonresident kindergarten through
13 twelfth grade pupils enrolled in all schools operated by the school district during the
14 previous regular school year and the school year prior to the previous regular school
15 year, minus the average number of pupils for whom the district receives tuition,



1 except pupils described in subdivision (1A) and pupils for whom tuition is being paid
2 pursuant to § 13-28-42 and plus the average number of pupils for whom the district
3 pays tuition;

4 (1A) Nonresident students who are in the care and custody of the Department of Social
5 Services, the Unified Judicial System, the Department of Corrections, or other state
6 agencies and are attending a public school may be included in the average daily
7 membership of the receiving district when enrolled in the receiving district. When
8 counting a student who meets these criteria in its general enrollment average daily
9 membership, the receiving district may begin the enrollment on the first day of
10 attendance. The district of residence prior to the custodial transfer may not include
11 students who meet these criteria in its general enrollment average daily membership
12 after the student ceases to attend school in the resident district;

13 (2) "Adjusted average daily membership," calculated as follows:

- 14 (a) For districts with an average daily membership of two hundred or less,
15 multiply 1.2 times the average daily membership;
- 16 (b) For districts with an average daily membership of less than six hundred, but
17 greater than two hundred, raise the average daily membership to the 0.8293
18 power and multiply the result times 2.98;
- 19 (c) For districts with an average daily membership of six hundred or more,
20 multiply 1.0 times their average daily membership;

21 (2A) "Sparse school district," a school district that meets each of the following criteria:

- 22 (a) Has an average daily membership per square mile of 0.50 or less;
- 23 (b) Has an average daily membership of 500 or less;
- 24 (c) Has an area of four hundred square miles or more;

- 1 (d) Has at least five miles between its secondary attendance center or centers and
2 that of an adjoining district;
- 3 (e) Operates a secondary attendance center; and
- 4 (f) Levies ad valorem taxes at the maximum rates allowed pursuant to § 10-12-42
5 or more;
- 6 (2B) "Sparsity average daily membership," calculated as follows:
- 7 (a) For sparse school districts, divide the average daily membership by the area
8 of the school district in square miles;
- 9 (b) Multiply the quotient obtained in subsection (a) times negative 0.25;
- 10 (c) Add 0.125 to the product obtained in subsection (b); and
- 11 (d) Multiply the sum obtained in subsection (c) times the average daily
12 membership;
- 13 (3) "Index factor," is the annual percentage change in the consumer price index for urban
14 wage earners and clerical workers as computed by the Bureau of Labor Statistics of
15 the United States Department of Labor for the year before the year immediately
16 preceding the year of adjustment or three percent, whichever is less;
- 17 (4) "Per student allocation," for school fiscal year 2006 is \$4,237.72. Each school fiscal
18 year thereafter, the per student allocation is the previous fiscal year's per student
19 allocation increased by the index factor;
- 20 (5) "Local need," the per student allocation multiplied by the sum of the adjusted average
21 daily membership plus the sparsity average daily membership;
- 22 (6) "Local effort," the amount of ad valorem taxes generated in a school fiscal year by
23 applying the levies established pursuant to § 10-12-42;
- 24 (7) "General fund balance," the unreserved fund balance of the general fund, less general

1 fund exclusions plus, beginning with transfers made in fiscal year 2001, any transfers
2 out of the general fund for the previous school fiscal year;

3 (8) "General fund balance percentage," is a school district's general fund balance divided
4 by the school district's total general fund expenditures for the previous school fiscal
5 year, the quotient expressed as a percent;

6 (9) "General fund base percentage," is the general fund balance percentage as of June 30,
7 2000. However, the general fund base percentage can never increase and can never
8 be less than twenty percent;

9 (10) "Allowable general fund balance," the fund base percentage multiplied by the
10 district's general fund expenditures in the previous school fiscal year;

11 (11) "Imputed interest rate," the average prime rate for the preceding fiscal year minus 2.5
12 percentage points;

13 (12) "General fund exclusions," revenue a school district has received from the imposition
14 of the excess tax levy pursuant to § 10-12-43; revenue a school district has received
15 from gifts, contributions, grants, or donations; revenue a school district has received
16 under the provisions of §§ 13-6-92 to 13-6-96, inclusive; and any revenue in the
17 general fund set aside for a noninsurable judgment.

18 Section 2. That § 4-5-29.2 be amended to read as follows:

19 4-5-29.2. Pursuant to S.D. Const., Art. XII, § 6, the state investment officer shall determine
20 the market value of the education enhancement trust fund as of December 31, 2003, and each
21 calendar year thereafter less the investment expenses transferred pursuant to § 4-5-30. The state
22 investment officer shall calculate an amount equal to four and eight tenths percent of that market
23 value, without invading principal, as eligible for distribution. For the purpose of this section,
24 the term, principal, means the sum of all contributions to the fund. Beginning with the

1 distribution in fiscal year 2007, the market value shall be determined by adding the market value
2 of the trust fund at the end of the sixteen most recent calendar quarters as of December
3 thirty-first, and dividing the sum by sixteen. Upon notice of that amount by the state investment
4 officer, the state treasurer shall transfer the amount from the education enhancement trust fund
5 to the state general fund as soon as practicable after July first of the next fiscal year.

6 Section 3. The state treasurer shall transfer from the state general fund an amount equal to
7 eight tenths percent of the fair value of the education enhancement trust fund calculated in § 4-
8 5-29.2 from the education enhancement trust fund to the sparse school district fund which is
9 hereby created in the state treasury. The purpose of the fund is to provide funding to sparse
10 school districts as defined in subdivision 13-13-10.1(2A).

11 Section 4. There is hereby appropriated from the sparse school district fund the sum of three
12 million dollars (\$3,000,000), or so much thereof as may be necessary, to the Department of
13 Education for distribution to sparse school districts pursuant to this Act.

14 Section 5. The secretary of the Department of Education shall approve vouchers and the
15 state auditor shall draw warrants to pay expenditures authorized by this Act.

16 Section 6. That § 4-8A-8 be amended to read as follows:

17 4-8A-8. ~~Moneys~~ Except as otherwise provided by this Act, moneys appropriated on a
18 program basis by the General Appropriation Act may be transferred between program accounts
19 within or between programs within departments and bureaus or between departments and
20 bureaus to reflect a reorganization pursuant to Article IV, section 8 of the South Dakota
21 Constitution only at the written request of a governing body, department secretary, or bureau
22 commissioner, or designee, in accordance with procedures established by the Bureau of Finance
23 and Management and only upon written approval of the Bureau of Finance and Management.
24 Transfer of moneys appropriated by the General Appropriations Act between departments,

1 institutions, and bureaus that is not necessary for a reorganization pursuant to Article IV, section
2 8 of the South Dakota Constitution may only occur at the written request of a governing body,
3 department secretary, or bureau commissioner, or designee, only in accordance with procedures
4 established by the Bureau of Finance and Management and only upon approval by the special
5 committee created in this chapter. The Bureau of Finance and Management shall keep a record
6 of all such authorizations of transfers and make them available for public inspection. The bureau
7 shall also submit an informational report detailing all transfers approved to the special
8 legislative committee established in § 4-8A-2.

9 Section 7. That chapter 4-8A be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Money appropriated as state aid to general education may not be transferred to other
12 program accounts. Money appropriated as state aid to general education may be spent for only
13 general aid to public schools.

14 Section 8. That chapter 4-8 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 If the amount of money appropriated as state aid to general education is in excess of the
17 amount required to meet the entitlement provided for in chapter 13-13, the secretary of the
18 Department of Education shall, at such time as the excess is determined, distribute the excess
19 to all school districts on a pro rata basis according to each school district's average daily
20 membership as defined in subdivision 13-13-10.1(1).

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

831M0464

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 138** - 02/08/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Adelstein, Broderick, and Duniphan and Representatives Hennies, Howie, McLaughlin, and Van Etten

1 FOR AN ACT ENTITLED, An Act to revise certain provisions regarding the appointment of
2 an agent to receive any legal process.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 15-7-6 be amended to read as follows:

5 15-7-6. The use and operation by a resident of this state or ~~his~~ the resident's agent, or by a
6 nonresident or ~~his~~ the nonresident's agent of a motor vehicle within the State of South Dakota,
7 shall be deemed an irrevocable appointment by ~~such~~ the resident or ~~his~~ the resident's agent when
8 ~~he~~ the resident has been absent from this state continuously for ~~six months~~ ninety days or more
9 following a motor vehicle accident, or by ~~such~~ the nonresident or ~~his~~ the nonresident's agent at
10 any time, of the secretary of state of South Dakota to be his or her true and lawful attorney upon
11 whom may be served all legal process in any action or proceeding against ~~him~~ the resident or
12 nonresident or his or her personal representative growing out of such use and operation of a
13 motor vehicle within this state, resulting in damages or loss to person or property, whether the
14 damage or loss occurs on a highway or on abutting public or private property. ~~Such~~ The



1 appointment is binding upon the nonresident's personal representative. ~~Such~~ The use or
2 operation of a motor vehicle by ~~such~~ the resident or nonresident is a signification of ~~his~~ the
3 resident's or nonresident's agreement that any such process in any action against ~~him~~ the resident
4 or nonresident or his or her personal representative which is so served, shall be of the same legal
5 force and validity as if served upon ~~him~~ the resident or nonresident personally or on ~~his~~ the
6 resident's or nonresident's personal representative.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

550M0488

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 143** - 02/08/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Sutton (Duane) and Napoli and Representatives Tidemann, Frost, Haverly, and Peters

1 FOR AN ACT ENTITLED, An Act to make an appropriation to the state fair.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. There is hereby appropriated from the state general fund the sum of seven
4 hundred fifty thousand dollars (\$750,000), or so much thereof as may be necessary, to the
5 Department of Agriculture for the state fair.

6 Section 2. There is hereby appropriated from the employer's investment in South Dakota's
7 future fund the sum of two hundred fifty thousand dollars (\$250,000), or so much thereof as
8 may be necessary, to the Department of Agriculture for the state fair.

9 The money appropriated in this section may be spent only after all other appropriations of
10 moneys for the state fair for fiscal year 2007 have been fully spent.

11 Section 3. The Secretary of the Department of Agriculture shall approve vouchers and the
12 state auditor shall draw warrants to pay expenditures authorized by this Act.

13 Section 4. Any amounts appropriated in this Act not lawfully expended or obligated by
14 June 30, 2007, shall revert in accordance with § 4-8-21.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

787M0125

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 153** - 02/09/2006

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Earley, Apa, Gant, Greenfield, and Napoli and Representatives Klaudt, Haverly, Hunhoff, Peters, Putnam, and Rausch

1 FOR AN ACT ENTITLED, An Act to transfer certain moneys from the railroad trust fund to
2 the property tax reduction fund and to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The state treasurer shall transfer forty-two million dollars (\$42,000,000) from
5 the railroad trust fund to the property tax reduction fund.

6 Section 2. Whereas, this Act is necessary for the support of the state government and its
7 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
8 full force and effect from and after its passage and approval.



State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

645M0245

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 188** - 02/09/2006

This bill has been extensively amended (houghoused) and may no longer be consistent with the original intention of the sponsor.

Introduced by: Senators Schoenbeck, Adelstein, Bartling, Broderick, Dempster, Duniphan, Gray, Greenfield, Kelly, Knudson, Koetzle, Koskan, Lintz, McCracken, Moore, Napoli, Nesselhuf, Olson (Ed), Peterson (Jim), Sutton (Dan), Sutton (Duane), and Two Bulls and Representatives Dykstra, Faehn, Frost, Haley, Hanks, Haverly, McCoy, McLaughlin, Murschel, Sebert, Turbiville, Valandra, and Vehle

1 FOR AN ACT ENTITLED, An Act to prohibit governmental entities from selling certain
2 goods, commodities, and services to the general public.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Legislature of South Dakota finds that the involvement of governmental
5 entities in the sale of goods, commodities, and services is an infringement on the free enterprise
6 system. The Legislature recognizes that the free enterprise system supports and pays for
7 governmental services and competition by governmental entities in some cases is detrimental
8 to the best interests of South Dakota.

9 Section 2. No governmental entity, including those adopting home rule pursuant to S.D.
10 Const., Art. IX, § 2 and including the legislative and executive departments may sell goods,
11 commodities, or services to the general public, if those goods, commodities, or services are
12 readily available through a private business or a nongovernmental entity.



1 Section 3. The Legislature may by law provide for exceptions to section 2 of this Act in
2 regard to sales of goods, commodities, and services by the State of South Dakota.

3 Section 4. The provisions of this Act do not apply to industrial parks or utilities, or to the
4 expansion or creation of infrastructure by a governmental entity for the provision of public
5 services, such as roads, bridges, buildings, water and sewer, and other services not suitable for
6 private enterprise to provide.

7 Section 5. If a governmental entity other than the State of South Dakota desires to enter into
8 the sale of goods, commodities, or services that the governmental entity is not presently
9 providing on the effective date of this Act, the governmental entity shall:

10 (1) Propose an ordinance describing the goods, commodities, or services to be provided.

11 The ordinance shall also set forth the costs of such goods, commodities, or services
12 and the source of funds to finance the costs of such goods, commodities, or services;

13 (2) Before adoption of such ordinance the governing body shall hold at least one public
14 hearing. Notice of the time and place of the hearing and a description of the goods,
15 commodities, and services sought to be provided shall be given once at least ten days
16 in advance by publication in an area newspaper of general circulation. Any interested
17 person shall be given a full, fair, and complete opportunity to be heard at the hearing,
18 and the governing body may refuse or adopt the ordinance with or without
19 amendment; and

20 (3) Any ordinance finally adopted by the governing body is subject to referendum. The
21 resolution shall be effective twenty days after the completed publication thereof
22 unless the referendum is invoked. A majority vote of the electorate voting is required
23 to approve the ordinance.

24 Section 6. The provisions of this Act shall apply prospectively to the expansion of existing

- 1 commercial activities or new commercial activities by a governmental entity.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

400M0675

SENATE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **SB 202** - 02/03/2006

Introduced by: The Committee on Appropriations at the request of the Governor

1 FOR AN ACT ENTITLED, An Act to make an appropriation for costs related to increased
2 energy costs in K-12 school districts and postsecondary vocational education institutions and
3 to declare an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. There is hereby appropriated from the state general fund the sum of two million
6 one hundred fifty thousand dollars (\$2,150,000), or so much thereof as may be necessary, to the
7 Department of Education to be distributed on a one-time basis to approved K-12 school districts
8 and postsecondary vocational education institutions to help pay for increased heating costs
9 realized during the 2005-2006 school year.

10 Section 2. To participate and receive funds appropriated in section 1, any public school or
11 postsecondary vocational education institution shall submit an energy reimbursement form with
12 supporting information related to heating costs incurred for the 2005-2006 school year and the
13 2004-2005 school year to the Department of Education. The Department of Education shall
14 disburse the funds based on the increases in costs from 2004-2005 year to the 2005-2006 year.
15 The funds shall be distributed on a pro-rata share of the total amount of funds requested. Any



1 school district participating shall submit a statement signed by the school district superintendent,
2 the school district business manager, and the school district school board president that this
3 funding is being accepted on a one-time basis. Any postsecondary vocational education
4 institution participating shall submit a statement signed by the director of the institution, the
5 business manager for the institution, and the school district school board president that this
6 funding is being accepted on a one-time basis.

7 Section 3. Any amounts appropriated in this Act not lawfully expended or obligated by
8 June 30, 2006, shall revert in accordance with § 4-8-21.

9 Section 4. Whereas, this Act is necessary for the support of the state government and its
10 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in
11 full force and effect from and after its passage and approval.

State of South Dakota

EIGHTY-FIRST SESSION
LEGISLATIVE ASSEMBLY, 2006

913M0526

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SJR 2** - 02/08/2006

Introduced by: Senators Bartling, Apa, Duenwald, Duniphan, Earley, Gant, Gray, Greenfield, Hansen (Tom), Hanson (Gary), Kelly, Kloucek, Koskan, McNenny, Moore, Napoli, Peterson (Jim), Schoenbeck, Smidt, and Sutton (Dan) and Representatives Tornow, Buckingham, Davis, Faehn, Frost, Fryslie, Gillespie, Glenski, Hackl, Haverly, Howie, Hunhoff, Hunt, Jerke, Klaudt, Kraus, Krebs, Lange, McCoy, Michels, Miles, Nelson, Novstrup, Peters, Putnam, Rausch, Rave, Rounds, Schafer, Tidemann, Van Etten, and Weems

1 A JOINT RESOLUTION, Proposing and submitting to the electors at the next general election
2 an amendment to Article VI of the Constitution of the State of South Dakota, relating to
3 abortion.

4 BE IT RESOLVED BY THE SENATE OF THE STATE OF SOUTH DAKOTA, THE HOUSE
5 OF REPRESENTATIVES CONCURRING THEREIN:

6 Section 1. That at the next general election held in the state, the following amendment to
7 Article VI of the Constitution of the State of South Dakota, as set forth in section 2 of this Joint
8 Resolution, which is hereby agreed to, shall be submitted to the electors of the state for
9 approval.

10 Section 2. That Article VI of the Constitution of the State of South Dakota, be amended by
11 adding thereto a NEW SECTION to read as follows:

12 § 28. This Constitution shall not be construed to grant any right relating to abortion.

